

(2024) 03 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 1078 Of 2024

Neena Uppal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Customs Act, 1962 — Section 28H, 49

Citation : (2024) 03 BOM CK 0090

Hon'ble Judges : G. S. Kulkarni, J; Firdosh P. Pooniwalla, J

Bench : Division Bench

Advocate : Prakash Shah, Jas Shanghavi, Jitendra Mishra

Final Decision : Allowed

Judgement

G. S. Kulkarni, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. This Petition under Article 226 of the Constitution of India is filed inter alia for the reliefs that the imports in question, namely, of betelnuts / supari described in the Petition as Menthol Scented Sweet Supari ("goods") imported by the petitioner, be directed to be provisionally released by respondent Nos.2 and 3 on acceptance of Provisional Duty (PD) bond, without any security.
3. The case of the Petitioner is that she is involved in the business of trading in such goods. Before the import of the goods, on 14th November 2022, the Petitioner had approached the Customs Authority for Advance Ruling, Mumbai ("CAAR") seeking classification of such goods in terms of Section 28H of the Customs Act, 1962 ("Act, 1962"). The CAAR rendered its ruling dated 24th February 2023 wherein the classification of the goods in question was confirmed to be falling under CTH 21069030. Pursuant thereto, on 5th August 2023, the Petitioner, imported a consignment of the said goods from one M/s. Mano Agro Company Limited, Cambodia. The consignment was received at the JNPT and

was subject matter of Bill of Entry no.7215645 under which the petitioner had sought clearance of the said goods for home consumption. The Bill of Entry was finally assessed approving classification under CTH 21069030.

4. On such backdrop when the petitioner requested for clearance of the goods, it was informed to the petitioner that as a query has been raised by the Docks Officer, the goods cannot be cleared. Between the period 25th August 2022 to 30th August 2022, the petitioner requested the respondents to grant permission for warehousing under section 49 of the Act, 1962. Such permission was granted to the petitioner. The petitioner attempted to take further steps to clear the goods, namely, on 12th October 2023, at the request of the petitioner, respondent No.3 approached the Director, Food Safety and Standards Authority of India (FSSAI) for verification / testing of the impugned goods inter alia on the ground that the Petitioner had given vague description suggesting that some processes were conducted on the impugned goods which could not be ascertained with the naked eye and, therefore, the nature of the mix created in the impugned goods would require verification from the FSSAI. Pursuant thereto, the FSSAI issued its test report dated 7th December 2023 which was provided to respondent No.3 inter alia, recording that the goods were Split Areca Nut with mild smell of Menthol and confirmed to FSSAI standards (Exhibit 'H'). Such opinion, as rendered by the FSSAI, which is part of the report, reads thus:

"Opinion: On the basis of tested parameters, the Sample of Arec Nut/Betel Nut conforms to the standard laid down under Regulation No 2.3.55 of Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011."

5. It is the petitioner's case that despite a favourable test report rendered by the FSSAI, for almost a period of five months from the date of the imports, the respondents did not grant clearance of the goods and in these circumstances, the petitioner was required to approach this Court in the present proceedings, praying for the following reliefs:

(a) this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, its officers, subordinates, servants and agents to:

(i) forthwith allow release of goods imported vide assessed Bill of Entry No. 7215645 dated 05.08.2023 on payment of duty applicable under the Chapter heading 21069030 of the Customs Tariff;

(ii) to issue detention certificate for waiver of detention and all other charges levied (viz. storage, fumigation, etc.) by the custodian on the Petitioner in respect of the goods lying in the custom bonded warehouse from the date of detention till the date of clearance

b) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondent Nos. 2 and 3 to forthwith release the goods

imported by the Petitioner and covered by Bill of Entry No. 7215645 dated 05.08.2023, provisionally, on acceptance of Provisional Duty (PD) Bond without any security or on any other terms as this Hon'ble Court may deem fit;

6. The proceedings were listed before us on earlier occasions when a contention was raised on behalf of the respondents, that the Department was of the opinion that a report also be obtained from the DYCC (Deputy Chief Chemist of Customs). Accordingly, we adjourned the proceedings on the earlier occasion, and more particularly on 31st January 2024, recording the statement of Mr.Mishra, learned counsel for the respondents, that the samples were already drawn and sent to DYCC, and that a report would soon be provided by the DYCC. Accordingly, the DYCC's report is obtained which is dated 8th February 2024 and is placed on record on behalf of the respondents by an additional affidavit. The said report reads thus:

"BE NO-7215645 DT. 05.08.23

Report:-

The sample as received is in the form of cut Pieces of betel nut with few pieces of kernel husk fragments treated with menthol, vegetable oil, sweetening agent.

The sample u/r does not answer positive test for lime, catechu and tobacco,

The sample u/r contains pieces of kernel husk fragment which implies that the product may not be ready to use.

Sealed remnant returned"

(emphasis added)

7. On the basis of the said report, the deponent of the affidavit Mr.Akshay Patil, Group 1, JNCH, has stated in paragraph 8 of the affidavit that, since the goods are not ready to use and there is presence of kernel husk fragments, the goods do not conform to the description of the goods as per the advance ruling issued in the matter. Primarily, on such contention the respondents contend that the reliefs, as prayed for by the petitioner should not to be granted.

8. On the above conspectus, we have heard the learned counsel for the parties. With their assistance, we have also perused the record.

9. It is not in dispute that, prior to the import of the goods in question, the Petitioner had made an application to CAAR in regard to the classification of the impugned goods. Such ruling was rendered on 22nd February 2023 that the goods be classified under CTH 21069030. Pursuant thereto, the Petitioner had made the imports in question. It is also clear that the Bill of Entry was finally assessed approving classification as opined by the CAAR.

10. It appears that the respondent No.3 had taken steps to examine the goods from the perspective of its human consumption before the goods are cleared for home consumption. For such reason, after two months of the assessment of the

bill of entry on 5th August 2023, that is, on 12th October 2023, Respondent No.3 requested the Director of FSSAI for verification / testing of the said goods. As noted above, the FSSAI had rendered its opinion, on the basis of the samples which were drawn by the Department, that the goods conform to the standard laid down under Regulation 2.3.55 of Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011. We have perused Regulation 2.3.55, which reads thus:

"2.3.55 ARECANUTS OR BETELNUTS OR SUPARI

1. Description: (a) "Arecanuts" or "Betelnuts" or "Supari" means nuts obtained from Areca Palm (Areca catechu L.).

(b) The product shall be dry, well matured, sound, clean, whole or cut, fully dehusked, uniform in colour, i.e. bright shining to dull red colour.

(c) It shall be free from synthetic colouring matter and shall be free from insect infestation, visible moulds, fissures and shrinkage and shall not be hollow.

(d) The product shall not have any off flavour, odour or other undesirable characteristics and shall also conform to the following standards, namely:-

S.No.

Characteristics

Requirements

1

Moisture % (Maximum)

7

2

Damaged Nuts % (by weight) (Maximum)

12

a.

For whole nuts or supari (Damaged nuts include blemish or chacked nuts, broken nuts, nuts not fully behusked and those the pith of which is black)

b.

For cut nuts or supari (Damaged nuts include blemish/cracked nuts, nuts not fully

3.

Damaged by moulds and insects % (by weight) (Maximum)

3

11. It is thus clear that the FSSAI, following the statutory mandate under the said Regulations, had no objection to the goods being cleared for home consumption. The Respondents, however, were not satisfied, and over and above the FSSAI opining that the goods conform to the edible standards, as laid down under the said regulations, respondent no.3 obtained a further analysis of the goods from the DYCC. The DYCC accordingly tested the sample of the said goods, and issued its report dated 8th February 2024, which we have noted hereinabove. The opinion of the DYCC appears to be that the sample contains "kernel husk fragments", to record that the product "may not be ready to use". It is interpreting such report, on behalf of the Respondents, in the reply affidavit of Mr.Akshay Patil, it is contended that, since the goods are not ready to use and as there is presence of kernel husk fragments, the goods have impurities, when the report per-se does not talk about any impurity. Such attribution of impurity is contained in paragraph 8 of the affidavit in reply which reads thus:

"8. The respondents say that since the goods are not ready to use and there is presence of impurities the kernel husk fragments and the goods are cut pieces, the goods do not conform to the description of the goods as per the advance ruling issued in the matter."

12. This apart, the reply affidavit has further sought to raise an issue of classification as seen from paragraph 10 thereof.

13. We may observe, that from the materials on record of the department, there was no reason for the Respondents to discard the opinion as rendered by the FSSAI so as to take a stance not to clear the goods for home consumption. In our opinion, there was also no reason for the Respondents to disown or read into the report of the DYCC as to what has actually not been provided, namely, that there are impurities in the goods much less harmful.

14. With the assistance of the learned counsel for the parties, we examined the issue as to what is the purport of the DYCC's report when it uses the words "that the samples u/r contain pieces of kernel husk fragments". It appears from the material furnished before us by the learned counsel for the parties, and which ought not to be in dispute that the "kernel husk" is the hard (brown) portion of a coconut, the particles of which may get mixed when the kernel (white edible portion inside the coconut) is grated. If the grating in a given case is little deep, it is likely that the actual kernel is mixed with the particles of the hard portion (skull of the coconut) which holds the kernel. It is also likely that some strings of the outer husk of the kernel (literally "the dry fiber part of the coconut") can also be described to be kernel husk.

15. Thus, we do not find that there is any objectionable or any fatal impurity which would render the goods to be labelled as prohibitory. In our opinion, the respondents ought not to have taken such a decision that the goods should not be granted a clearance and/or a situation is brought about that they do not conform, to the opinion as rendered by the CAAR. In our view, in the facts of the

present case, accepting such stand, as taken on behalf of the respondents would certainly render nugatory, the ruling of the CAAR, as also the report of the FSSAI and the DYCC. Such stand of the department thus, cannot be sustained.

16. In the aforesaid circumstances, the petition needs to be allowed by the following order :

ORDER

- a. The Petition is allowed in terms of prayer clause (a).
- b. If applied by the petitioner, a detention certificate be issued to the petitioners for the relevant period, within a period of three weeks from the release of the goods.
- c. Rule is made absolute in the above terms. No costs.